

Appeal Decision

Hearing held on 15 June 2016

Site visit made on 15 June 2016

by Julia Gregory BSc (Hons), BTP, MRTPI, MCMI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 July 2016

Appeal Ref: APP/B3438/C/16/3146219

The Land to the north side of Dove House Farm, Blythe Bridge Road, Caverswall, Stoke on Trent, ST11 9EA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Stephen Beaumont of Holiday Cottages Staffordshire Limited against an enforcement notice issued by Staffordshire Moorlands District Council.
 - The notice was issued on 5 February 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the partial, and apparently ongoing, construction of a stone and brick built building in the approximate position that is outlined in blue on the attached plan numbered DB 1 ("the Incomplete Building"). For the purposes of identification, all that can be seen of the Incomplete Building on the attached photograph numbered DB 2 has been outlined in green.
 - The requirements of the notice are:
 - i. Cease all building work relating to the further construction/development of the Incomplete Building.
 - ii. Demolish and completely remove the whole of the Incomplete Building from the Land.
 - iii. Remove from the Land all building materials and rubble arising from compliance with requirement (ii) above.
 - The period for compliance with the requirements is (i) Within 1 day from the date that this Notice takes effect. (ii) & (iii) Within 2 months from the date that this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b) and (f) of the Town and Country Planning Act 1990 as amended.
-

Preliminary matters

1. The Council issued a Stop Notice in respect of the same development at the same time as they issued the enforcement notice. There has been some building works carried out since the issue of the Stop Notice and the enforcement notice. These were relatively minor and not the subject of any further action by the Council.
2. Planning permission and listed building consent have been granted for the conversion of a range of barns close to the enforcement building into 7 dwellings.¹ The boundary of that development includes the land covered by the enforcement notice. The plans also show the removal of the original building on the appeal site, but there is no condition requiring that action.

¹ Planning permission 11/00664/FUL, Listed Building Consent reference 11/00672/LBC

3. The Council alleges that the barn conversion has not been built in accordance with the approved plans and is considering whether to take enforcement action. There is also a high fence and gate which screens the development from views from the yard and the public highway beyond, which the Council says does not have the benefit of planning permission.
4. There was discussion at the Hearing about whether the conversion development as built was so different that it could not benefit from that planning permission. It is possible that the original planning permission had been commenced but then changes made to the design as building work progressed. The Council did not distance itself from the principle of the development or the planning permission that had been granted. The complex of barns is being occupied as holiday lets. The planning permission requires the construction of garages to replace a large agricultural building in front of the appeal building.
5. None of these are matters for me to make a determination about but I have taken them into account in my determination of the appeal, so far as they are material to the consideration of the surroundings of the appeal building.
6. Dove House Farm is a grade II listed building and listed building consent was granted for the conversion works on the basis that they were curtilage buildings. The appellant disputes that listed building consent was required for those works arguing that they are not within the curtilage of the listed building.
7. The Council has not issued a listed building enforcement notice in respect of the works the subject of the enforcement notice. It is not necessary for me to determine whether listed building consent would be required for the development as that could be subject to separate process.
8. Whether or not the building the subject of the enforcement notice is curtilage listed, the relationship to Dove House Farm and the converted barns remains the same. Also it does not alter its relationship to St Peters Church which is a grade II* listed building, the listed monuments within the churchyard and churchyard wall. I have considered those relationships in my determination of the appeal.
9. Planning permission and listed building consent has recently been refused for a new scheme which would incorporate an eighth dwelling along with 4 new build dwellings.² The refused plans show the erection of a dwelling on the site of the appeal building. There is no extant planning permission for that work and there has been no appeal against the refusal of planning permission. Prior to the issue of the enforcement notice the building the subject of the notice was reduced in height.
10. The building comprises two rooms. One room of the building houses a biomass boiler which is to serve the barn complex and has a partially completed roof. The remainder of the building is to be for a timber fuel store but has incomplete walls, no roof and not much of the front elevation. There was no timber in the building at my site visit. There is no dispute that planning permission is required for the building.

² SMD/2015/0660 and 661

11. In representations, plans were submitted by the appellant³ showing the completion of the building the subject of the enforcement notice. The Council considers that I should determine the appeal on the basis of what has been built. I consider that the correct approach.

Appeal on ground (b)

12. This appeal is on the grounds that those matters, (i.e. the matters stated in the notice which may give rise to the breach of planning control), have not occurred.
13. The thrust of the appellant's argument is that the development comprises the improvement to an existing building rather than the erection of a new building. Furthermore, he says that the building has not been constructed to provide new garaging or as a new build dwelling. For these reasons, he states the allegation has not occurred.
14. There is no dispute between the parties that there was an agricultural building located on the site prior to the works alleged in the enforcement notice. None of those attending the Hearing for the appellant had seen the building before the works had taken place. The Council representative had first visited the site in December 2015 when works were under way. There was no affidavit evidence from either side.
15. The appellant states that the original building has been subject to certain modifications including the removal of the asbestos roof and the provision of additional brickwork to replace the external cladding. What remains of the building is the rear concrete block wall some 8.5m in length, the side elevation concrete block wall some 5.2m in length and the floor pad, which is some 42m².
16. The Council representative accepted on site that almost all of the concrete floor was part of the original building. They say that all that remains otherwise of the original building is a part of the block end wall, which has been extended upwards on elevation 4 as shown on plan 3521-05-39C but does not reach the full extent of the front of the building, which is marked by a steel post. They also consider that there is some original block work that has been extended upwards at the rear of the timber fuel store.
17. They say that rest of the building is new. That comprises all of the construction of the walls, roof and doors of the biomass boiler room, a small section of the front of the timber fuel store, the outer brick wall of elevation 4 and the brickwork on the elevation 3 along with the extension to the block work on that wall. The building is not disputed to be only partially constructed.
18. There are plans which show that building which were submitted with the planning applications. Furthermore drawing 3521-05-40 was submitted with the appeal representations. Also, there are undated aerial photographs submitted of the building prior to the works and various undated photographs before and after the building works had taken place from the churchyard. There was also a letter from the former owner of the building.
19. The aerial photographs and plans submitted with applications and by the appellant show the original building had an open front unlike the appeal

³ Ref 3521-05-39C

- building. There is no dispute that the roof on the biomass boiler room is new. It does not resemble that shown on any of the photographs. There is no roof on the other part of the building.
20. None of the plans shows the rear wall of the original building to have a step in it or part of it being on top of the churchyard wall. The existing storehouse elevation shown on plan 3521-05-40 shows a straight rear wall attached to the adjacent barn and the section through the building shows the rear wall not on top of the churchyard wall. None of the photographs submitted show that. Indeed photographs submitted by the appellant and the Council taken when the original building was in existence show the rounded top of the church wall to be outside of the rear wall of the biomass boiler part of the building.
21. The appeal building is not attached to the complex of barns unlike the original barn. The exterior walls of the original building were not demonstrated to be brickwork and stone. There is nothing to show that the original building comprised two rooms with a blockwork dividing wall.
22. Furthermore, a previous owner of the building has stated in detailed representations that a section of the boundary wall between Dove House Farm and St Peter's Church was taken down, and soil excavated from the side of the Churchyard in order to build the building. Whilst I acknowledge that it is not stated quite which piece of wall was removed, since he lives at Dove House Farm, previously owned the building and has paid close attention to what was going on at the time, and substantial parts of the evidence points to that being correct, I conclude that this corroborates the Council's version of events. Everything that I saw on site pointed to that being correct.
23. In addition, photographs have been submitted to show that the biomass boiler room was being built initially with a first floor quite unlike the building previously on the site. This does not support that it should be considered merely as repair, improvement or alteration. Instead, it seems more probable than not that most of the original building has been removed. What remains has been significantly extended. The resulting building is substantially different to that which previously existed and is not therefore the rebuilding of an existing building. There is no assertion that the building is for the same purpose. The appellant does not dispute that planning permission is required for the building work.
24. I acknowledge that according to the appellant the building has a decrease in volume from the original building of 8 cubic metres, a decreased footprint of 25 square metres and an increase in height now at the front of only some 0.485 metres. Nonetheless, for the reasons already given, as a matter of fact and degree, it does not amount to an extension or alteration to a building.
25. The allegation in the notice does not state the use of the building and is directed solely at the operational development. Whilst the reasons for issuing the notice make assertions about the possible use of the building, the expediency of issuing the notice is not a matter for my determination. As the allegation in the notice does not specify the use of the building, the notice is not defective on that basis.
26. For all these reasons, I conclude that the extent of the building operations are such that the description of the breach of control correctly describes the breach

of planning control alleged. The breach of planning control alleged has occurred as a matter of fact. The appeal on ground (b) fails.

Appeal on ground (a)

Main Issues

27. The main issues are:

- I. whether the development would amount to inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- II. the effect on the openness of the Green Belt and any other harm. In determining that other harm, I shall consider the effect on the setting of neighbouring listed buildings, the farm buildings and courtyard at Dove House Farm and whether the development would preserve or enhance the character or appearance of the Caverswall Conservation Area.
- III. I shall then determine, if it is inappropriate development, whether the harm by reason of inappropriateness, and any other harm is clearly outweighed by other considerations. If it is, I shall then consider whether they are the very special circumstances required to justify the development.

Whether inappropriate development

28. The building is sited outside the village of Caverswall and lies within the Green Belt. The Council relies on the Green Belt policies of the National Planning Policy Framework (the Framework). The construction of new buildings in the Green Belt is inappropriate unless it is within any of the exceptions in paragraphs 89 or 90 of the Framework. The appellant seeks to rely on the third bullet point of paragraph 89 by arguing that the development is an extension or alteration of a building provided that it does not result in a disproportionate addition over and above the size of the original building.
29. The Council on the other hand consider it a replacement building which would be inappropriate development because it is not in the same use. They consider that it cannot therefore be considered to fall within the exception in the fourth bullet point in paragraph 89.
30. Given my conclusions in respect of the ground (b) appeal I am satisfied that this is a replacement building and, as it is not intended for agricultural use, it would not be covered by the fourth bullet point of paragraph 89 of the Framework. There is no other exception that would provide an exemption. I therefore conclude that the development would amount to inappropriate development in the Green Belt. Paragraph 87 of the Framework identifies that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. I attribute this substantial weight.

Openness

31. Paragraph 88 seeks to ensure that substantial weight is given to any harm to the Green Belt. The essential characteristics of Green Belts are their openness and permanence. Given that most of the original building has been removed, the development as built significantly affects openness. Even if considered in the context of what had been there previously the replacement building is

constructed with brick and stone exterior and has a partially filled in front elevation unlike the more lightweight and more open structure which had Yorkshire boarding slats to the rear and sides and an open front. The temporary storage of a transit van and any contents of the barn do not alter what were its inherent characteristics. I conclude that there would be some small harm to openness.

Any other harm

32. The building is incomplete. The appellant suggested that a condition could require the submission of details to complete it in accordance with details approved by the Council. Since not all of the roof and walls are constructed, whilst I note the proposals submitted by the appellant, there is no mechanism for incorporating those into a deemed planning application. I consider that the works are too extensive to be covered by a condition requiring a scheme to be submitted.
33. The building is sited in a sensitive location close to many listed buildings which, in the absence of a conservation area statement I consider form a defining characteristic of the Caverswall Conservation Area.
34. The building backs onto the churchyard of St Peters Church which is a grade II* listed building. The various structures of the Wood Memorial, church wall and piers, groupings of chest tombs and the Wilshaw memorial within the churchyard have grade II listed status. The building adjoins the historic church wall, and is partially either on top of part of it or replacing part of it. The building does not enhance or better reveal the significance of the churchyard wall for the reason that part of it can no longer be seen.
35. Furthermore, unlike the unobtrusive agricultural building it replaced it forms a hard high edge constructed of brick and stone to the churchyard. The building dominates the edge of the churchyard and by doing so detracts from the setting of listed monuments and the church close by.
36. The building faces towards the rear of Dove House Farmhouse across a large open sided barn which is required to be removed to make way for garages by the original barn conversion planning permission. Even though the building is unfinished and the doors on the front of the boiler room are rudimentary, the farmhouse is a significant distance away. The relationship is sufficiently distant that it would not be harmful to its setting whether or not the barn is removed and whether or not the garages are built.
37. The building is not attached to the converted barn complex. The facing materials used in its construction of brick and stone are complimentary to the character of the barn complex. The front doors and the roofing material could also be required by condition to be approved by the Council and to be sympathetic to the barns. I conclude that the development would blend satisfactorily with that development. Even if the high concealing fencing nearby is removed, the building is so set back from Blythe Bridge Road that there would not be a significant impact on the character or appearance of the conservation area from there. Furthermore, since the barns have been converted to residential use and there is no active agricultural use of the rest of the farmyard, I conclude that the use itself would not be harmful in conservation terms.

38. Nonetheless, given my concerns about the impact on the church, churchyard and wall, I conclude that the building is harmful to the setting of the listed buildings close by to the north and the Conservation Area as a whole.
39. Balancing all of the various factors and because of the scale of the development, the effect of the development is to create less than substantial harm. Nonetheless, less than substantial harm does not equate to a less than substantial planning objection since I attach great weight to the conservation of Caverswall Conservation Area as a designated heritage asset and the listed buildings, the setting of which are adversely affected.
40. Policy DC1 of the Staffordshire Moorlands Core Strategy March 2014 (CS), amongst other matters, requires a high quality of development that adds value to the area, and respects the site and its surroundings. For the reasons already given, the development fails to comply with that policy. CS policy DC2 seeks to safeguard and where possible enhance the historic environment and so the development fails to comply with this policy. Furthermore, paragraph 131 of the Framework identifies the desirability of sustaining and enhancing the significance of heritage assets.
41. Part of the building houses a biomass boiler. I note that the biomass boiler would provide a renewable energy source but this is a very limited public benefit and no other public benefits have been brought to my attention. I conclude therefore that the less than substantial harm to the significance of the designated heritage assets would not be outweighed by public benefits and that the development would fail to preserve or enhance the character or appearance of the Caverswall Conservation Area and the setting of the listed buildings to the north. This would be contrary to the development plan and the Framework as a whole. This adds to the harm by reason of inappropriateness and the harm to openness.

Other considerations

42. The biomass boiler was not part of the barn conversion development and has been no part of any planning application submitted to the Council. There is no planning condition requiring such a boiler to serve the dwellings. Alternative boiler provision may be required for the dwellings but little evidence has been provided as to what would be required and at what cost.
43. There is little detail on the environmental credentials of the boiler, albeit that the appellant claims it provides a sustainable form of energy generation from a renewable source. I consider therefore that the wider environmental benefits associated with increased production of energy from renewable sources as required by paragraph 91 of the Framework have not been demonstrated.
44. I have already detailed why I have concluded that the building does not amount to a significant improvement in visual terms. Whilst I acknowledge the purposes of the Green Belt the development offends the essential characteristic of the Green Belt which is its openness and permanence.
45. The other considerations are of little weight and do not clearly outweigh the harm by reason of inappropriateness, the harm to openness and other harm that I have previously identified contrary to the Framework and the development plan. It follows that they are not the very special circumstances

necessary to justify inappropriate development within the Green Belt. For all these reasons, the appeal on ground (a) fails.

Ground (f) appeal

46. This is whether the steps required to be taken exceed what is necessary to remedy the breach or remedy the harm to amenity. In this case, the notice does not say whether the notice is aimed at remedying the breach or the harm to amenity.
47. Nonetheless, the Council has said in representations that the enforcement notice aims to remedy the injury to amenity. The Council has argued that what remains of the original building was very limited and is now an integral part of the new building. If all of the original building, excluding the steel post, which is separate from the building, were not to be removed, the result would be an unsightly remnant, which could result in the issue of a notice under S215 of the Town and County Planning Act 1990.
48. Since the notice seeks to remove the remnants of the original building in addition to that which has been built anew, it follows that the requirements would seek to remedy the harm to amenity. The requirements by removing all the new parts of the building would also serve to remedy the breach.
49. The appellant alleges that the parts of the original building that were not demolished should be allowed to be retained. He argues that this is important because it forms the basis for negotiations about a replacement building. Furthermore, if the rear wall were required to be removed in its entirety there would be stability implications in respect of retaining the churchyard land.
50. I have already accepted that the remnants of the building that remained amounted to the block work shown in orange at the rear on appendix 7 of the Council statement amounting to part of the side elevation and the rear elevation of the timber store, along with most of the floor slab of the building.
51. There is no dispute that the parts of the building identified earlier were part of a lawful building. Nevertheless, I conclude that the requirement is not excessive because it relates to a new building. The appellant claims that the building should be returned to its previous status and allowed to be re-built, but that building no longer exists and there is no agricultural use purported. The steps would secure the removal of that new building.
52. The Council considers that the remnant of the building would be less harmful to amenity than the whole of the building. This is a sensitive location directly adjacent to the churchyard and open to view from there. The retention of ruinous sections of blockwork and hard surfacing would be harmful to amenity because of their materials and condition. They would fail to preserve or enhance the character or appearance of the conservation area and the setting of the listed buildings to the north. The steps would remedy the injury to amenity.
53. The Council has advised that it would consider whether it would be necessary to take separate enforcement action to secure the re-building of the churchyard retaining wall. That could therefore be subject to separate control.
54. It follows that the steps are not excessive and the appeal on ground (f) fails.

Conclusions

55. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Decision

56. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Julia Gregory

Inspector

APPEARANCES

FOR THE APPELLANT:

Carl Copestake	Knights
Steve Bradwell	Trigpoint conservation and planning
Michael Askew	Knights

FOR THE LOCAL PLANNING AUTHORITY:

Benjamin Hurst	Planning Enforcement Officer, Staffordshire Moorlands District Council
----------------	---

DOCUMENTS SUBMITTED AT THE HEARING

Doc 1	A1 plans 3521-05-40 and 3521-05-39C submitted by the appellant
Doc 2	2 photographs of parts of the building submitted by the appellant
Doc 3	Building details pre- and post-alteration submitted by the appellant